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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 EDWARD QUINACMAN DEPERIO, et al,
12 Plaintiff,

13 vs.

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15 DOWNEY SAVINGS & LOAN
16 ASSOCIATION F.A., et al,

17 Defendant.

CASE NO. 09cv446-MMA(AJB)

**ORDER GRANTING DEFENDANT
DSL SERVICE COMPANY'S
UNOPPOSED MOTION TO DISMISS
FOR FAILURE TO PROSECUTE**

[Doc. No. 52]

18 This matter is before the Court on Defendant DSL Service Company's ("Defendant") motion
19 to dismiss this action in its entirety based on Plaintiffs' failure to prosecute pursuant to Federal Rule
20 of Civil Procedure 41(b). Plaintiffs did not file an opposition.

21 On October 2, 2009, the Court *sua sponte* dismissed Plaintiffs' First Amended Complaint as
22 to all remaining defendants [Doc. No. 51]. The Court granted Plaintiffs leave to file a further
23 amended complaint on or before October 19, 2009. Plaintiffs failed to do so. On November 23,
24 2009, Defendant brought the instant motion, requesting that the Court dismiss this case based on
25 Plaintiffs failure to prosecute.

26 The Ninth Circuit has held a district court may properly grant an unopposed motion to
27 dismiss pursuant to a local rule where the local rule permits, but does not require, the granting of a
28 motion for failure to respond. *See generally, Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

1 Local Civil Rule 7.1(f)(3)(c) provides that “[i]f an opposing party fails to file papers in the manner
2 required by Local Rule 7.1(e)(2), that failure may constitute a consent to the granting of that motion
3 or other ruling by the court.” As such, the Court has the option of granting Defendant’s motion on
4 the basis of Plaintiffs’ failure to respond. The Court need not exercise its discretion to do so here,
5 however, because the Court finds good cause to grant Defendant’s motion on the merits. “For
6 failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant
7 may move for dismissal of an action or of any claim against the defendant.” Fed. R. Civ. P. 41(b).
8 Plaintiffs have been absent almost entirely from this litigation, failing to oppose the dispositive
9 motions brought against them and failing to file a second amended complaint. Dismissal is
10 appropriate. As such, the Court **GRANTS** Defendant’s motion and **DISMISSES** this action in its
11 entirety **WITH PREJUDICE**. The Clerk of Court is instructed to enter judgment accordingly and
12 terminate the case.

13 **IT IS SO ORDERED.**

14 DATED: December 18, 2009

A handwritten signature in cursive script, reading "Michael M. Anello", written in black ink.

Hon. Michael M. Anello
United States District Judge